

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3979 of 2005
in
CIVIL APPLICATION No. 9147 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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FATSAR GRAM PANCHAYAT THR' ITS SARPANCH & 50 - Petitioner(s)
Versus
STATE OF GUJARAT & 60 - Respondent(s)

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Appearance :

MR Ketan Shah for MR TUSHAR MEHTA for Petitioner(s) : 1,
MS SANGITA VISHEN AGP for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 9.
MR YATIN SONI for Respondent(s) : 2,
MR GAJENDRA SINGH FOR MR HS MUNSHAW for Respondent(s) : 3, 5,
MR PRAVIN GONDALIYA for Respondent(s) : 10 - 60.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/11/2005

ORAL JUDGMENT

1. This petition is filed by Fatsar Gram Panchayat

praying for following reliefs:

6.The petitioner, therefore, prays that-

(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the action of the respondents in cancelling the auction being held by the petitioner-panchayat.

(B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted directing the respondents, their officers, agents and servants not to create any hurdle, hindrance or obstacle in the petitioner-panchayat conducting the auction proceeding and directing the respondents, their officers, agents and servants to remain present in the auction proceeding either personally or through their authorised representation.

(C) Pending admission, hearing and final disposal of this petition, an interim injunction may kindly be granted directing the respondents, their officers and agents and servants not to create any hurdle, hindrance or obstacle in the petitioner-panchayat conducting the auction proceeding and directing the respondents, their officers, agents and servants to remain present in the auction proceeding either personally or through their authorised representative.

(D) Pass such other and further orders as may deem fit in the interest of justice.

2. By detailed interim order dated 24/3/2005 learned Single Judge of this Court passed an order, the portion of which reads as follows:

5.Under the above circumstances, I am inclined to pass the following order:

(i)Rule returnable on 22.6.2005. Mr. Gondalia waives service of rule on behalf of newly added respondents.

(ii)By interim order it is observed that the petitioner gram panchayat shall be at liberty to hold a fresh auction of the plots in question, but, before holding the auction, the procedure for refixation of the upset price shall be undertaken and the proper terms and conditions including keeping gap of 30 days shall be strictly observed by the gram panchayat. The respondent No.3 shall depute some officer not below the rank of Dy. District Development Officer to supervise such auction which may be held by the gram panchayat.

It is further clarified that at the said auction the newly added respondents who are represented through Mr. Gondalia shall also be at liberty to participate in the auction by submitted their offer in accordance with law and in the event the offer is accepted of any of the persons who have also earlier participated and deposited the amount, the gram panchayat shall give proportionate adjustment by giving credit to the said amount which is lying with the gram panchayat.

The auction which may be held shall be subject to further orders which may be passed by this Court at the time of final hearing. Such auction shall also be without prejudice to rights of newly added respondents who are represented through Mr. Gondalia to claim refund of the amount which was earlier deposited, in case no offer is submitted by the concerned respondent or submitted and not accepted, as the case may be.

(iii)The aforesaid exercise of holding auction and further process in accordance with law shall be completed preferably on or before 31.5.2005 and after the auction is held the report shall be placed by the respondent No.3

before this Court.

3. It appears that the interim order passed by the learned Single Judge on 24/3/2005 was carried in appeal by aggrieved private respondents. However Letters Patent Appeal subsequently came to be withdrawn. It is stated that pursuant to the interim order passed by this Court on 24/3/2005 petitioner gram panchayat has already held the fresh auction on 30th May, 2005 for allotment of plots in question. Highest bidders have also deposited $\frac{1}{4}$ amount of the sale price as per the terms and conditions. Auction is now to be finalised and remaining sale proceeds to be recovered from the bidders. Some of the private respondents also successfully participated in the fresh auction.

4. In view of these developments the purpose of the petitioner in filing the petition has been achieved and it would not be necessary to maintain the present petition any longer. It may be noted that this Court in its order dated 24/3/2005 provided that the auction which may be held shall be subject to the further orders that may be passed by this Court at the time of final hearing of the petition. Now that the petition is itself being disposed of finally, petitioner is permitted to proceed

further in accordance with law for finalisation of the auction proceedings after following required procedure. This Court has not expressed any opinion about the fresh auction proceedings and before finalisation, the same shall have to go through necessary legal formalities in this regard.

5. It may be noted that while issuing rule in Civil Application No. 9147/05, this Court had observed that on the returnable date i.e. 18/11/2005, the court may disposed of the main matter finally.

6. In view of the above discussion, observations and directions, the petition is disposed of. Rule is discharged with no order as to costs.

7. In view of the order passed in the Special Civil Application No.3979/05 no orders are required to be passed in Civil Application, the same is disposed of accordingly.

(Akil Kureshi, J.)

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